IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 476 OF 1999

1. Shri Santosh Hindurao Pawar)
2. Shri Santosh Vitthal Nalawade))
3. Shri Bhuvaneshwar Babubhai Patil)
All residents of)
Rahul Nagar, Oata Scheme,)
Nigadi, Pune.) ...Appellants

V/s.

The State of Maharashtra. ...Respondents

Shri S.P. Kadam, Advocate for the Appellants.
Shri A.M. shringarpure, APP for the State.

CORAM : D.G. DESHPANDE AND V.M. KANADE, JJ.

DATED : DECEMBER 16, 2005

ORAL JUDGMENT (PER V.M. KANANDE, J.) :-

. The appellants are the original accused nos.1 to 3. They are challenging the Judgment and Order passed by the Additional Sessions Judge, Pune, in Sessions Case No.350/96 whereby the trial Court convicted the appellants for the offence punishable under Section 302 read with Section 34 of the Indian Penal Code and sentenced them to suffer Rigorous Imprisonment for life and also convicted them under Section 323 read with

Section 34 and sentenced them to suffer Simple Imprisonment for 15 days and to pay a fine of Rs.500/- each.

2. The prosecution case in brief is that accused no.1 stabbed Ramchandra Jadhav with a knife on his chest and stomach and after Ramchandra Jadhav fell down, the accused nos.2 and 3 gave kick and fist blows to the complainant Vishnu Atmaram Shinde (PW 3). This incident took place on 22nd February, 1996 between 9.45 to 10.00 p.m. Deceased Ramchandra had gone to his mother's house to enquire about her health as she fractured her leg. Laxman had accompanied the deceased. Complainant was inside the house. They came out at about 9.45 p.m. At that time, one Rajan Pillay was passing on that road and the maternal uncle of PW 3 viz. one Raju Jadhav called him and asked him certain questions and inquired why he was having a love affair with Nanda Jadhav. Due to this, there was quarrel between Rajan Pillay and Raju Jadhav and thereafter, Raju Pillay went to his house. Within a short time, all the three accused came to the spot and Santosh Pawar, accused no.1 tried to give stab

injury to PW 3 - Vishnu Shinde, however he did not succeed. In the meantime, Ramchandra Jadhav intervened the matter and tried to pacify accused no.1 Santosh Pawar. However, accused no.1 took out the knife from his pant pocket and stabbed Ramchandra Jadhav with a knife on his chest and stomach. The other two accused gave fist blows and kick blows to the complainant. Thereafter, the accused ran away. After the assault, the complainant also ran away from the place out of fear and returned back at about 12.30 a.m. and saw that Ramchandra Jadhav was lying on the road and blood was coming out from his chest and stomach. PW 3, therefore, took him to the hospital where he was declared dead. The police registered the offence under Section 302, 323 read with 34 of the IPC vide C.R.No.31/96. The accused were arrested. The clothes of the deceased and the accused were attached. The post martem was performed and thereafter, the chargesheet was filed against the accused. The trial Court convicted the accused on the basis of the evidence adduced by the prosecution.

3. The learned Counsel appearing on behalf of the

appellants submitted that the trial Court had erred in holding that the appellants had common intention to kill deceased Ramchandra Jadhav. He submitted that the quarrel had taken place between the Raju Pillay and Raju Jadhav and the appellants had come there to question Raju Jadhav and not the deceased and therefore, there was no intention to cause injury to deceased Ramchandra. He further submitted that from the prosecution evidence itself, it was apparent that deceased Ramchandra was suddenly attacked when he intervened in the quarrel between the appellant no.1 and Raju Jadhav. Another circumstance which showed that there was no intention to kill the deceased. He further submitted that so far as accused nos.2 and 3 are concerned, he did not share any intention with any one and they had merely given fist and kick blows to the complainant. He further submitted that no identification parade was held and that was serious lacunae in the prosecution case. He further submitted that the evidence of recovery of knife at the instance of the accused had not been proved.

4. Learned APP appearing on behalf of the State

vehemently opposed the said submission and submitted that prosecution had examined eye witnesses to the incident and the testimony of the eye witnesses was fully corroborated by the medical evidence. He submitted that therefore, the Judgment and Order of the trial Court may be confirmed.

5. In the present case, the prosecution has examined three eye wittiness. Apart from the evidence, the prosecution also relied on the evidence given by the Doctor who performed the post mortem of the deceased and further they have relied on the Chemical Analyser's Report and the recovery which is made at the instance of the accused.

6. In the present case, the prosecution has examined three eye witnesses PW 3, PW 4 - Laxman and PW 6 - Raju Jadhav. PW 3 - Vishnu Shinde who is the complainant in this case has narrated the entire incident and has specifically stated that accused no.1 gave two blows with a knife on the chest and stomach of the deceased and has further stated that accused nos.2

and 3 gave fist and kick blows to the deceased after he fell down. PW 4 - Laxman Dhotre also has reiterated the same sequence of events as given by PW 3. The evidence of these two witnesses is further corroborated by Raju Jadhav who has also stated that he had seen accused no.1 gave two stab blows to the deceased, one on the chest and the other on the stomach and that accused nos.2 and 3 had given fist blows and kick blows after the deceased fell down. All these three eye witnesses have been cross-examined at length by the defence and some minor contradictions in their testimony has been brought on record during this cross-examination. However, in our view, the material testimony of these three witnesses regarding the assault by accused no.1 with a knife on the chest and the stomach of the deceased is consistent and further the role played by accused nos.2 and 3 also has been described by these three witnesses. Though it was argued strenuously by the Counsel for the defence that there was no enmity between the deceased and the accused and there was neither any intention nor any motive to assault deceased, the fact remains that from the ocular testimony of these three witnesses which have

corroborated each other clearly establishes a fact that the accused no.1 gave two knife blows on the vital part of the body of the deceased with the knife when the deceased had tried to pacify the accused and had intervened in the matter to persuade the accused not to assault PW 3 Vishnu. Therefore, merely because there was no motive or intention to kill deceased Ramchandra, the accused no.1 had the knowledge that the injuries which was caused to Ramchandra are sufficient in the ordinary course of nature to cause death.

7. The ocular testimony of these three witnesses has been corroborated by the medical evidence of PW 7 - Shrikant Chandekar who performed the post mortem who has stated that he noticed ten external injuries which are as under :-

> (1) Stab injury, measuring 1.7 x 1 cm. situated over left 5th and 6th intercostal space, ablique, 1.5 cm left lateral to ventral midline, injury pening in thoracic cavity. Margins and angles clean cut.

(2) Stab injury, measuring 1.2 x 0.5 cm. situated over abdomen - 6 cm above and left of pubic cymphysis and 4 cm left lateral to ventral midline, opening in abdominal cavity, ablique, margins and angles clean cut.

(3) Abrasions, measuring 0.5 x 1.5 cm in an area 2 x 8 cm over left cheek and zygomatic area. Red.

(4) Abrasions over nasal bridge, 0.5 x 0.5 cm., 0.5 x 0.3 cm and 0.3 x 0.2 cm Red.

(5) Transverse abrasion over left shoulder laterally, 0.5 x 1.5 cm. Red.

(6) Abrasions over left little finger nuckle and surrounding area, 0.5 x 0.5 cm, 0.5 x 0.3 cm. and 0.5 x 0.5 cm. Red.

(7) Abrasion over left middle finger

preximal to interphalangeal joint dersally, 0.5 x 0.5 cm. Red.

(8) Abrasion over left knee, 0.5 x 0.8 cm., 0.5 x 0.5 cm. Red.

(9) Abrasions left right leg, L/3, 0.5 x 0.5 cm., 0.5 x 3 cm. Red.

(10) Abrasion over left side of neck, posterolaterally, 0.5 x 4 cm. Red.

Similarly, he also noticed the corresponding internal injuries in para 3 of the deposition which are as under :-

(1) Corresponding to external injury no.1.

(a) Through and through stab injury to corresponding intercostal muscles and pleura.

(b) Clean out fracture of lower edge of 5th

costal cartilagem total thickness and breadth of 6th costal cartilage and upper edge of 7th costal cartilage on left side.

(c) Pericardium shows clean cut injury over right ventricle, 1.8 x 0.3 cm, anteriorly.

(d) Through and through injury involving anterior wall of right ventricle and interior wall of right ventricle.

externally - wound of entry 1.5 x 0.5 cm. and wound of exit 1 x 0.5 cm.

(d) Pericardial sac contains 70 ml of blood with clots.

(2) Haematomas were observed under scalp

(a) right parietal region 5 x 6 cm. near vertex.

(b) Alnog suggital suture 1.5 x 4 cm and 1 x 3.5 cm.

(3) Subarachnoid haemorrhages over frontal lobes. present -

(4) 990 cc of blood with clots 150 cm in left hemithorax observed.

8. These injuries clearly indicate that the stab wound was inflicted on the deceased on the chest and stomach with such force that is pierced the heart and other parts of the chest and the stomach injury also was deep and the cause of death was due to these stab injuries.

9. Apart from the medical evidence, the recovery of knife which has been made at the instance of the accused which has been proved by the Investigating Officer PW 9 - Sopan Jamdade, is at Exhibit 29-B. The blood of the accused was also taken for examination and the panchanama was made at Exhibit 29-A. The Chemical

Analyser's Report also indicates that the blood which is found on the knife and on the clothes was human blood. Though the two panchas who prepared the spot panchanama and inquest panchanama PW 1 and PW 2 did not support the prosecution and was declared hostile, yet other evidence clearly establishes beyond reasonable doubt that accused no.1 had committed the murder of deceased Ramchandra. The findings recorded by the trial Court, therefore, will have to be confirmed. The conviction of the appellant no.1 - Santosh Hindurao Pawar for the offence punishable under Section 302 of the Indian Penal Code read with Section 323 of the Indian Penal Code is confirmed and he is sentenced to suffer Rigorous Imprisonemnt for life for the ofence punishable under Section 302 and he is sentenced to suffer simple imprisonement for 15 days for the offence punishable under Section 323 of the Indian Penal Code.

10. So far as accused nos.2 and 3 are concerned, in our view, the trial court erred in applying the provisions of Section 34 as it is difficult to come to a conclusion that accused nos.2 and 3 shared the intention

of accused no.1. The only role which is attributed by accused nos.2 and 3 is that they had given fist blows and kick blows to the deceased after he fell down. The prosecution has not established that these two accused had the knowledge that accused no.1 was going to kill deceased Ramahcnadra. In fact, there was no enmity between the accused and the deceased Ramchandra. In these facts and circumstances, we are of the view that the provisions of Section 34 are not attracted in the present case. The accused nos.2 - Santosh Vitthal Nalawade and accused no.3 - Bhuvaneshwar Babubhai Patil, are, therefore, acquitted of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code. They are, however, convicted for an offence punishable under Section 323 of the IPC and are sentenced to suffer Rigorous Imprisonment for two months.

11. The Judgment and Order passed by the trial Court is altered to the above extent. Accordingly, the appeal is partly allowed in the above terms.

12. Appellant nos.2 and 3 are on bail. They have already undergone the sentence for one month. Their bonds, therefore, shall stand cancelled.

(D.G. DESHPANDE, J.)

(V.M. KANADE, J.)